In the

SUPREME COURT OF UNITED STATES

October term, 1940

No.———

MISSOURI PACIFIC TRANSPORTATION COMPANY,
CHARLES D. JOHNSON,
COMMERCIAL CASUALTY INSURANCE COMPANY,
METROPOLITAN CASUALTY COMPANY, *Petitioners*

vs.

EUGENE A. PARKER, ADM., MYRTLE FLAGG, ADMX.,
ALICE CARROLL, ADMX., and ROY PALMER;
Respondents and Appellees Below

BRIEF IN SUPPORT OF WRIT OF CERTIORARI

I.

OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of Arkansas is reported in 140 S. W. (2d) 997. (See also Appendix, p. 14.)

II.

JURISDICTION

The opinion of the Supreme Court of Arkansas is dated May 13, 1940. (R. 232). Petition for rehearing was seasonably filed May 30, 1940 (R. 238), and was denied on June 17, 1940 (R. 240). Upon motion, stay of mandate was granted, to expire the 19th day of September, 1940, provided the appeal to this Honorable Court be perfected within the time prescribed by law.

2. The jurisdiction of this court is invoked under the provisions of Section 237 (b) and 240 (a) of the Judicial Code, as amended by act of February 13, 1925, as interpreted in rule 38, sub-section 1 of this court.

Petitioners have been consistent in their claim that their Federal rights were invaded both by the trial court and the Supreme Court of the State of Arkansas, and by the latter court's failure to decide the Federal question presented to it, petitioners are now entitled to invoke the judgment of this court to have same decided.

III.

STATEMENT OF THE CASE

A full statement of the case has been given under the heading, "Statement of the Case," in the petition which is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERROR

Petitioners respectfully refer to "reasons relied on for allowance of writ," and adopt each of said grounds as specifications of error which should require a reversal of the judgment of the Supreme Court of Arkansas.

V.

ARGUMENT

Petitioners respectfully urge that the trial court's failure to quash the jury panel under the circumstances set forth on Pages 3-4 of the petition, and the affirmance of the construction placed upon the statutes of Arkansas regulating such matter by its Supreme Court definitely amounted to a deprivation of fundamental and established rights of petitioners, which amounted to a denial to them of rights guaranteed to them by the due process and equal protection clauses.

It is one of the essentials of due process of law that a fair hearing be afforded a litigant in a trial which may result in the assessment of heavy damages against it. The very statement of petitioners' complaint by the Supreme Court of Arkansas demonstrates that petitioners were not dealt with by the trial court the same as other litigants.

Petitioners were consistent throughout in praying for a decision on a claimed Federal right. This matter was

presented to the Supreme Court and was ignored. They were entitled to a decision on the Constitutional issue, and if the Supreme Court of Arkansas has evaded that issue, this court should take jurisdiction and decide it. The Federal question was definitely raised and the Supreme Court of Arkansas failed to give it due recognition, and not having done so, petitioners are entitled to invoke the judgment of the court. (See Fox River Paper Company vs. Railroad Commission, 274 U. S. 650-657; 71 L. Ed. 1279, and cases cited.)

If the judgment of the Supreme Court of Arkansas is allowed to stand, petitioners will be prejudiced to the extent of $27,000.00, and in these circumstances they believe that procedural due process has been denied them in violation of the Fourteenth Amendment, and that this court should bring the case here and reverse the judgment of the Supreme Court of Arkansas.

We urge that the required remittitur of $11,000 in each of the three $16,000 judgments is a judicial finding on the part of the Supreme Court of Arkansas that the judgments were excessive. Certainly this action of the Supreme Court was a judicial pronouncement that the jury's findings were the result of rank, unreasonable prejudice in fixing damages at a sum in excess of three times the value of the claim.

We further urge that the circumstances attending the court's action in quashing the jury panel and their subsequent resummoning was prejudicial to applicant's cause. The court quashed the jury panel. Without ex-

cusing the panel and in their presence, he directed the sheriff to summon bystanders. The sheriff, without leaving the court room, summoned as bystanders the entire panel that had been quashed. Applicant was consequently forced to move to quash the panel in the presence of the panel that had just witnessed the quashing and resummoning of themselves. The verdict reflect that the jury was prejudiced by the entire proceedings and expressed their misunderstanding of the entire affair with excessive verdicts which were so unconscionable that the Supreme Court required a remittitur of more than two-thirds of their finding.

WHEREFORE, petitioners pray that this petition for a writ of certiorari be granted, and that this court proceed as is required by the law and the rules of this court in such cases, and that upon final hearing, the said judgment of the Supreme Court of Arkansas and of the District Court be reversed and that this court remand the cause to the proper state court, with proper instructions.

MISSOURI PACIFIC TRANSPORTATION COMPANY;
CHARLES D. JOHNSON;
COMMERCIAL CASUALTY INSURANCE COMPANY;
METROPOLITAN CASUALTY COMPANY

By .....

Attorney